

244

The Appellant's C A S E } Between John Grosvenor Esq; Appellant, And John Coy, Armond de Bourbon, Marques de Merimont, and Dan. Delaforce, Respondents.

C A S E.

THAT the Appellant was Captain of a Troop of Horse, raised in September -88, (whereof the Respondent, the Marques, was the Collonel) in which Command the Appellant continued till the 4th of January following; at which time the Appellant did in Person deliver to the Respondent 37 Troops, with their Horses, Accoutrements and Furniture, (being all fresh and new) and they served under the Command of the said Colonel Coy for above six Months in England, and afterwards in the Wars of Ireland, with the same Accoutrements and Furniture, and most of their Cloaks and Coats, with some alteration in the Lining.

Ans. - 90 & - 95.
That the Appellant did apply himself by Petition to the Lords Commissioners appointed to regulate the Army, to have his Money due to him from the said Respondents. But obtaining no relief from them;

Bill - 97.
The Appellant exhibited his Bill for an Account from the Respondents the Marques, and Delaforce the Agent, of his personal Pay and Substance to the 4th of Jan. 88; and from that time, for an account from the Respondent Coy of the Off-reckonings, (being Six Pence per diem stopped from each Trooper's Pay for their Cloaths and Accoutrements worn in the King's Service,) and paid for by the Appellant to the several Tradesmen that furnished the same.

The Defendant Coy's Answer.
Admits that he had stopped out of each Trooper's Pay the Off-reckoning; but insists, That the same did not belong to the Appellant.

Note 
That the said Marques, and Delaforce, refusing to answer the Appellant's Bill, he proceeded to Hearing only against the Respondent Coy.

Hearing June 1699.
This Cause was heard before the Honourable the Master of the Rolls, who order'd (*Int. al.*) That the Appellant should make out before a Master of that Court what he paid for the Cloaths and Accoutrements of his Troop, and what he receiv'd for the same; and the said Master was also order'd to state what the Respondent Coy had receiv'd of the Off-reckonings of the said Troop, from the 4th of Jan. -88, to the Time the said Troopers were new cloathed; and likewise whether any of the Troopers Old Cloaths and Accoutrements did serve under the Respondent's Command in the Wars of Ireland; and whether the Off-reckonings ought to be applied to pay for the Old Cloaths and Accoutrements, or for the New ones provided for them; and also to see whether the Respondent Coy had made any allowance to the Troopers for the same.

Report Feb. 20 1700.
That the Master pursuant to the said Order, after many Attendances, on both sides, certified,

- I. That the Appellant had paid the Tradesmen for the same Cloathing and Accoutrements 320 l. 6 s.
- II. That 37 of the Appellant's Troopers were detach'd by Colonel Coy, and added to his Regiment, with all their Cloaths and Accoutrements, being fresh and new, and did serve from the 4th of Jan. -88, in the same Cloaths and Accoutrements till August following; and afterwards, with the same Accoutrements, and most of their Cloaks, for two Years longer.
- III. That the Respondent Coy had stopped out of each Trooper's Pay Six Pence per diem, and made no allowance to the Soldiers for the same; and had receiv'd the full Off-Reckonings of a compleat Regiment, to March -92, (with an Overplus).

Hearing on Special Report, June 1700.
This Cause coming on again to be heard upon the Master's said Report, by the Honourable the Master of the Rolls, and it appearing by the Master's Report, and Proofs in the Cause, that the said Regiment was cleared, and that the said Off-reckonings were by the King's Order to be applied to pay the Tradesmen, and that the Appellant had paid the Tradesmen 320 l. 6 s. for the cloathing and accoutring the said Troop, as aforesaid, and had not any allowance for the same, and therefore stood in the place of the Tradesmen; and it appearing that the Respondent had receiv'd the Off-reckonings, and made no allowance to the Soldiers, but converted the same to his own Use, Decreed the Respondent Coy to pay the Appellant the said 320 l. 6 s.

Appeal June 1700.
From which Decree the Respondent Coy appealed to the Right Honourable the Lord Keeper.

Hilary Term last.
The said Cause came to be heard before the Lord Keeper, who expressed no Dissatisfaction as to the Reasonableness and Justice of the Appellant's Demands, but respite his giving of Judgment, till his Lordship had informed himself by some of the General Officers of the Army, touching the Usage and Custom of the Army, as to the application of the Off-reckonings in the like Cases.

March 18. 1700.
His Lordship was pleased to declare, That the Appellant had a Compassionate Case, but that he had received Information by some of the General Officers of the Army, That by the Custom and Usage of the Army, the Appellant was not intitled to have satisfaction out of the Off-reckonings receiv'd by the Respondent Coy; and thereupon reversed the Master of the Rolls Decree, and dismissed the Appellant's Bill;

WHICH the Appellant humbly conceives, and is advised, ought not to be dismissed, or the former Decree reversed, up n' any such Information of the General Officers, whose Interest may incline them to be partial in their Opinions touching this Matter, and who cannot be supposed to be fully apprised of the Appellant's Case, without hearing the Proofs in the Cause.

Wherefore the Appellant Humbly appeals from the said Dismissal, and hopes the former Decree shall stand.

First, For that it appears that the Appellant stands in the Place of the Tradesmen, having paid them; and it would be unreasonable that any Custom or Usage of the Army (if any such there be) (as indeed there is not) should be so far countenanced as to deprive the Tradesmen of what is justly due to them, when the Money is paid to the Colonels by the King, and not applied by them to the Proper Purpose, but converted to their own Use.

Secondly, By the Establishment of the Army, ready to be produced, it appears that the Off-reckonings are always to be applied to pay for the Cloaths and Accoutrements which they were first supplied with, and not for the New Cloaths which they had Six Months after

Note.
That there is due to the Appellant from the Marques of Merimont, and his Agent, for his Pay, and three Servants, and } l. s. d.
for the said Off-Reckonings for 101 Days } 218 18 06.
More from the Respondent to the Appellant for what he has proved he paid the Tradesmen for Cloathing and Accoutrements 320 l. 06 s. all which he must lose if this Decree be reversed, and the Dismissal stand, though the King } 320 06 00.
has paid the whole Money, and the 6 d. stopped from the Troopers.

*E. JENNINGS.
J. BROWNE.*